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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA

vs.

CASE NO.: 2:07cr178-WKW

CHRISTOPHER KENDELL RUSH,  
Defendant.

\* \* \* \* \*

SENTENCING HEARING

\* \* \* \* \*

BEFORE THE HONORABLE W. KEITH WATKINS, UNITED STATES  
DISTRICT JUDGE, at Montgomery, Alabama, on Tuesday, April 29,  
2008, commencing at 10:12 a.m.

APPEARANCES:

FOR THE GOVERNMENT: Mr. Verne H. Speirs  
Assistant United States Attorney  
OFFICE OF THE UNITED STATES ATTORNEY  
131 Clayton Street  
Montgomery, Alabama 36104

FOR THE DEFENDANT: Mr. C. Pate DeBardleben  
Attorney at Law  
2835 Zelda Road  
Montgomery, Alabama 36106

Proceedings reported stenographically;  
transcript produced by computer.

1 (The following proceedings were heard before the Honorable  
2 W. Keith Watkins, United States District Judge, at  
3 Montgomery, Alabama, on Tuesday, April 29, 2008, commencing  
4 at 10:12 a.m.:)

5 (Call to Order of the Court)

6 (Defendant present)

7 MR. DEBARDELEBEN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. SPEIRS: Good morning, sir.

10 THE COURT: We're here for the sentencing of  
11 Mr. Christopher Kendell Rush in 07-178. Let's take  
12 appearances. For the government, please?

13 MR. SPEIRS: Your Honor, Verne Speirs on behalf the  
14 United States.

15 THE COURT: Good morning.

16 MR. SPEIRS: Good morning, sir.

17 THE COURT: And for the defendant?

18 MR. DEBARDELEBEN: Your Honor, good morning. Pate  
19 DeBardleben for Mr. Rush.

20 THE COURT: Good morning.

21 Good morning, Mr. Rush.

22 THE DEFENDANT: Good morning, sir.

23 THE COURT: Would y'all like to come up to the podium,  
24 please?

25 This is a case that was tried with a conviction before

1 a jury on February the 5th, 2008, in my court. Mr. Rush, have  
2 you and your attorney had an opportunity to review the  
3 presentence report?

4 THE DEFENDANT: Yes, sir, we have.

5 THE COURT: Okay. Do y'all have any objections?

6 MR. DEBARDELEBEN: Not to the probation officer's  
7 report, Your Honor.

8 THE COURT: All right. Does the government have any  
9 objections, Mr. Speirs?

10 MR. SPEIRS: No, sir.

11 THE COURT: Are there any pending motions?

12 MR. DEBARDELEBEN: Not from the defendant, Your Honor.

13 MR. SPEIRS: Not from the government, Judge.

14 THE COURT: All right. In compliance with Justice  
15 Breyer's majority opinion in *Booker*, this Court, while not bound  
16 to apply the guidelines, has consulted them and has taken them  
17 into account on the issue of the appropriate range of sentence  
18 to be imposed in this case. There being no objections to the  
19 presentence report, the Court adopts the factual statements  
20 contained in the presentence report with specific findings that  
21 the offense level is 22, criminal history category is IV, the  
22 guideline range is from 63 to 78 months, the supervised release  
23 period is from two years to three years, and the fine range is  
24 from 7500 to \$75,000.

25 Does the government dispute those calculations?

1 MR. SPEIRS: No, sir.

2 THE COURT: Does the defendant?

3 MR. DEBARDELEBEN: No, sir.

4 THE COURT: All right. Mr. Rush, this is the time for  
5 you or your attorney to say whatever you need to in mitigation  
6 of the sentence before I pronounce sentence in this case.

7 Mr. DeBardleben, do you or Mr. Rush have anything  
8 you'd like to say at this time?

9 MR. DEBARDELEBEN: Your Honor, we are asking the Court  
10 to sentence Mr. Rush to the bottom of the guidelines. We do  
11 believe, based off everything, that would be a satisfactory  
12 sentence to meet all the requirements that are set out in the  
13 code. And so we are asking Your Honor to sentence him to 63  
14 months.

15 THE COURT: Okay.

16 MR. DEBARDELEBEN: Mr. Rush?

17 THE COURT: Mr. Rush, do you have anything to say?

18 THE DEFENDANT: Yes, sir. Good morning, sir, first of  
19 all.

20 THE COURT: Good morning.

21 THE DEFENDANT: I ask that you take in consideration my  
22 understanding of my position in this matter at this point.  
23 Having been -- had a jury trial, I feel strongly that there are  
24 some issues that didn't really come out that should have. And I  
25 understand that the Court's position at this time is to impose

1 sentencing on me based on the findings of the jury and of the  
2 legal proceedings that has went forth so far.

3           In consideration of my sentence, sir, I understand that  
4 I ended up in this court because I am a convicted felon and that  
5 I've had some run-ins with the law, even serving time here in  
6 the state of Alabama. My mind-set at this point is at the time  
7 of all of this, I wasn't doing a real good job of managing my  
8 life. I really wasn't. This incident has stirred up in me the  
9 understanding that I need to take more responsibility for my  
10 life, to be -- to manage it and the relationships that come with  
11 it. That's just my mind-set. And I hope that you will consider  
12 it as you impose sentencing.

13           THE COURT: Okay. Thank you, Mr. Rush.

14           Anything from the government?

15           MR. SPEIRS: Your Honor, the government would just like  
16 to point out that back in 5/18 of '95, Mr. Rush was convicted  
17 for kidnapping and theft of property. And according to this  
18 report, it's where that he took a vehicle at gunpoint. And had  
19 that come to federal court, Judge, that would likely be a  
20 federal carjacking with a 924(c) charge, which is a very serious  
21 charge, Judge.

22           And I understand what Mr. Rush is saying. It seems as  
23 though the opportunity for him to change his life -- he's had  
24 numerous opportunities, according to the presentence report.  
25 He's had numerous run-ins with the law. And although he may be

1 a criminal history category of IV, I think is where he  
2 ultimately -- ultimately ends up, he's had some difficult times  
3 adjusting to society, Your Honor. And I think that what the  
4 probation has recommended, 72 months, reflects well that he  
5 needs some time in federal prison in order to -- to reflect on  
6 how he's found himself here today, Judge.

7 THE COURT: Okay.

8 MR. DEBARDELEBEN: Do you want to respond to that?

9 Judge, I'm just pointing out to the Court, which is  
10 clear to the Court, that this was 13 years ago. I do not know  
11 if Mr. Rush wants to respond to Mr. Speirs or not.

12 THE DEFENDANT: And again, sir, I would like to state  
13 that the original charge on that when I was arrested was  
14 kidnapping first and first-degree armed robbery. It was also  
15 clarified and given -- presented before the jury during jury  
16 instructions before my judge, Judge Sally Greenhaw, that if they  
17 did not believe that I possessed a gun at the time of this  
18 incident, that they could find me guilty of first-degree theft  
19 of property, and which the jury did come back with that  
20 verdict. So again, I would like to point out that the findings  
21 before the court that was determined by the citizens of the  
22 state of Alabama was the fact that I did not possess a gun.

23 THE COURT: Does probation have a record of that  
24 paragraph number 45, that 1995 conviction, as to whether it was  
25 for kidnapping and theft of property?

1           PROBATION OFFICER ROBINSON: For the kidnapping and  
2 theft of property, Your Honor?

3           THE COURT: Yes, sir.

4           PROBATION OFFICER ROBINSON: Your Honor, you'll have to  
5 give me just a moment.

6           THE COURT: Take your time.

7           (Brief pause)

8           THE COURT: Or does the government have any document as  
9 to that conviction?

10          PROBATION OFFICER ROBINSON: Your Honor --

11          MR. SPEIRS: Your Honor, the only documentation that I  
12 have is what has been put into the presentence report, which  
13 nobody objected to, Judge. The facts are what they are, and  
14 there's been no objection made. And according to what's in the  
15 PSR, as the Court knows, the victim in that case said as she  
16 approached her vehicle, Rush approached her brandishing a  
17 handgun. And here we are some years later, but again with  
18 Mr. Rush having another gun.

19          PROBATION OFFICER ROBINSON: Your Honor, this is the  
20 nol-pros for the armed robbery.

21          (Off-the-record discussion between the Court and the  
22 probation officer)

23          MR. DEBARDELEBEN: Judge, Mr. Rush says he has it, if  
24 y'all are having trouble finding it. He says he has it in his  
25 papers.

1 THE COURT: Well, I think I have it up here.

2 MR. DEBARDELEBEN: Okay.

3 (Off-the-record discussion between the Court and the  
4 probation officer)

5 THE COURT: All right. The Court has examined the  
6 supporting documents in the probation file. Paragraph 45 of the  
7 presentence report reflects a conviction for kidnapping and for  
8 theft of property first, 20 years, each count to be served  
9 concurrently with each other. According to the case action  
10 summary in the Circuit Court of Montgomery County, Alabama, in  
11 Case 95-1050, the jury trial was held on August 16, 1995. And  
12 George C. Howell, Foreperson, found the defendant, Christopher  
13 Kendell Rush, guilty of theft of property in the first degree  
14 and found the defendant, Christopher Kendell Rush, guilty of  
15 kidnapping in the second degree on the same date. The  
16 kidnapping case was 95-1050. The theft-of-property case was  
17 95-1051.

18 Mr. Kendell -- I mean Mr. Rush, you're 35 years old?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you have achieved your GED at some  
21 point; is that right? Did you get your GED in prison?

22 THE DEFENDANT: Yes, sir. Yes, sir, I did.

23 THE COURT: You're well-spoken. You've spoken well for  
24 yourself this morning. It seems to me that I read that you have  
25 some kind of electrician's certificate?



1           THE DEFENDANT: Yes, sir. I'm a journeyman  
2 electrician, sir.

3           THE COURT: All right. Well, I want to give you as  
4 much credit as I can for what you said in court this morning.  
5 But the fact of the matter is what you say about yourself may or  
6 may not be true; it's what you do that's true about you. And I  
7 want to give you credit for your words, but your actions and  
8 your criminal history is not good. You've got three supervised  
9 release revocations, one failure to appear, the carjacking and  
10 the theft, a stolen car in '93. And I realize that's when you  
11 were younger, but you ran in this case from the officers and you  
12 have kicked an officer in a previous case. You left the scene  
13 of an accident in 1995. And I've taken all those factors into  
14 consideration in determining what I think will be a reasonable  
15 sentence for you.

16           I'm not opposed or was not opposed to giving you the 72  
17 months recommended by probation and acceded to by the  
18 government. But my sentence is going to be a little different  
19 than that, and I'll explain that in a minute.

20           Having considered the guidelines, the sentence will now  
21 be stated, but you'll have a final chance to make legal  
22 objections before the sentence is imposed.

23           Having considered the sentencing guidelines and  
24 evaluated the reasonableness of a sentence through the lens of  
25 18 U.S.C., Section 3553, it is the judgment of the Court that

1 you're committed to the custody of the Federal Bureau of Prisons  
2 to be imprisoned for a total term of 75 months. That will be 75  
3 months on count one and 75 months on count two to be served  
4 concurrently.

5           Having considered the guideline computations and taken  
6 them under advisement, the Court finds that the sentence imposed  
7 is sufficient but not greater than necessary to comply with the  
8 statutory purposes of sentencing. Furthermore, the sentence is  
9 reasonable considering the following sentencing factors found at  
10 Section 3553(a). First, the nature and circumstances of the  
11 offense and the history and characteristics of the defendant.  
12 And I've already explained some of my thoughts with respect to  
13 your history and characteristics. Second, to reflect the  
14 seriousness of the offense and to promote respect for the law  
15 and to provide just punishment for the offense. Mr. Rush, when  
16 you run from police officers, you put yourself in danger, you  
17 put the officers in danger, and most of the time you put the  
18 public in danger. And that's the reason I gave you the extra  
19 three months. Third, to afford adequate deterrence to criminal  
20 conduct. Fourth, to protect the public from further crimes of  
21 this defendant. And fifthly, to provide needed correctional  
22 treatment in the most effective manner. And sixth, to avoid  
23 unwarranted sentence disparities among defendants.

24           Upon release from imprisonment, you will be placed on  
25 supervised release for a term of three years. This term

1 consists of three years on counts one and two to be served  
2 concurrently. Within 72 hours of your release from custody, you  
3 shall report to the probation office in the district to which  
4 you have been released. While on supervised release, you shall  
5 comply with the mandatory and standard conditions of supervised  
6 release on file with this Court.

7           You are also to comply with the following special  
8 conditions. One, you have to cooperate in the collection of  
9 DNA. Two, you shall submit to a search of your person,  
10 residence, office, or vehicle pursuant to the search policy of  
11 the Court. Three, at that time, you will participate in a  
12 program of drug testing administered by the United States  
13 Probation Office. Fourth, you will pay child support. I've  
14 noted for the record that you are behind in court-ordered child  
15 support in over \$34,000. And I know from the probation officer  
16 you dispute that, but that's in the report. And whatever it is,  
17 you'll probably never be able to pay it all. But when you get  
18 out, you will need to support your children, and I'll expect you  
19 to. And that's going to be a condition of your probation.

20           The Court finds that there is no identifiable victim  
21 who incurred a financial loss as a result of this offense. And  
22 based on your inability to pay, I'm not imposing a fine.  
23 However, you do owe the United States District Court Clerk a  
24 special assessment fee of \$200, which is due immediately.

25           Now, are there any objections to the sentence or to the

1 manner in which the Court pronounced it? First of all, from the  
2 government?

3 MR. SPEIRS: No objection, Your Honor.

4 THE COURT: Any objections from the defendant?

5 MR. DEBARDELEBEN: Your Honor, we were wanting the 63  
6 months, as you're well aware; but other than that, we have no  
7 objection.

8 THE COURT: All right. Then the sentence is ordered  
9 imposed as stated.

10 Mr. Rush, you have the right to appeal the sentence  
11 imposed within ten days. And if you're not able to afford  
12 counsel, the government will appoint counsel for you and the  
13 government will be paid for you. Is there any -- yes, sir.

14 MR. DEBARDELEBEN: Your Honor, for the record, I am  
15 filing a notice of appeal for Mr. Rush on today's date.

16 THE COURT: Okay. Notice of appeal is noted for the  
17 record. Anything further from the government?

18 MR. SPEIRS: Not from the United States, Judge.

19 THE COURT: Anything further from the defendant?

20 MR. DEBARDELEBEN: No, Your Honor.

21 THE COURT: Okay. Mr. Rush, I wish the best for you,  
22 and you are now remanded to the custody of the United States  
23 Marshal.

24 MR. SPEIRS: May I be excused, Your Honor?

25 THE COURT: You may.

1 MR. SPEIRS: Thank you, sir.

2 THE COURT: Good to see you.

3 MR. SPEIRS: Thank you, sir. It's good to see you.

4 MR. DEBARDELEBEN: Thank you, Your Honor.

5 THE COURT: Yes, sir. Mr. DeBardleben, are you  
6 finished for today?

7 MR. DEBARDELEBEN: I am.

8 THE COURT: You may be excused as well.

9 MR. DEBARDELEBEN: Thank you.

10 THE COURT: Good to see you.

11 (Proceedings concluded at 10:31 a.m.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

This 30th day of May, 2008.

/s/ Risa L. Entrekin  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Official Court Reporter